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The question for consideration is whether Government Order No.455/IV-B, dated 30-3-1946 which was issued under Rule 81 of the Defence of India Rules continues to be valid order. That order prohibits persons from removing charcoal or firewood from any place within the Province of Bombay to any place in India outside the Province except under and in accordance with the conditions of a licence granted by the authority referred to therein. Charcoal and firewood are essential commodities specified in Schedule I to the Bombay Essential Commodities and Cattle (Control) Act, 1946, and the question that falls to be considered is whether the order which was passed in respect of these commodities under the Defence of India Rules is saved by section 5 of that Act. The Act in so far as it relates to essential commodities and their distribution etc. would be relatable to entries 27 and 28 in the Provincial Legislative List. Under section 297 of the Government of India Act 1935, no Provincial Legislature or Government shall, by virtue of the entry in the Provincia Legislative List relating to trade and commerce within the Province or the entry in that List relating to the production, supply and distribution of commodities have power to pass any law or take any executive action prohibiting or restricting the entry into or expert from the Province of goods of any class or description. The order issued under the Defence of India Rules puts a restriction on the expert of firewood and charcoal from the Province and in view of the provisions of section 297 of the Government of India Act could not have been validly made under the Bombay Essential Commodities and Cattle (Control) Act, 1946. It cannot, therefore, be deemed

to have been made and continued in operation under that Act (see R.L.A.'s opinion No. G/723, dated 27-12-48).

2. Attention is, however, invited to R.L.A.'s opinion No. 1330, dated 7-2-1948. As pointed out in that opinion if the object of the order is merely to regulate or control in some degree the conduct and liability of the persons engaged in removing firewood and charcoal and licences are freely (and perhaps cheaply) granted the order would not offend against the constitutional provisions in section 297(1)(a).

Sd/P.M.Lad.
1/4

Remembrancer of Legal Affairs.

U.O.R. to C.S.D.No. G/249, dated the 2/4/1949.

VGP. 18-7-56.

G.O.F.D.(S) No. 34, dated 22nd December 1942, provides that no person shall remove any hay by road, rail or sea from any place within the limits of the Surat and Thana District to any place in India outside the limits of the said Districts except under a licence granted by the District Magistrate concerned. This Order was issued under clause (a) of sub-rule 81 of the Defence of India Rules and was valid when issued but it is now being continued under the Bombay Essential Commodities and Cattle (Control) Act, 1946. It is no doubt true that hay or kadbi has been included in the list of essential commodities in Schedule I of the Act. The Act, in so far as it relates to essential commodities and their distribution, etc would be relatable to entry 27 and 29 in the Provincial Legislative List. Under section 297 of the Government of India Act no Provincial Legislature or Government shall, by virtue of the entr in the Provincial Legislative List relating to trade and commerce within the Province or the entry in that list relating to the production, supply and distribution of commodities, have power to pass any law or take any executi ve action prohibiting or restricting the entry into or expor from the Province, of goods of any class or description. It, therefore, follows that no order can validly be made under the Act which would prohibit the export of hay or kadbi from the Province and for that reason the Order, dated 22nd December 1942, cannot be deemed to have been made under the provisions of the Act to the extent it forbids the export of hay or kadbi from the Province. It is true that the Act has also in view the maintenance of cattle, which may independently be relatable to the entry 20 Agriculture in the Provincial Legislative List. Nevertheless, the power to make an order given under section 4 is for regulating the maintenance, supply and distribution.... of cattle , fo the purpose of maintaining or increasing the supply or

securing the equitable distribution and availability at fair prices of cattle. It will be difficult to hold that the power for this purpose to regulate the maintenance of cattle should be so widely construed as to include therein the power for regulating the supply and distribu tion or trade and commerce in any article (hay or kadbi) which is essential for the maintenance of cattle. That is further made clear by the detailed powers given in sub section (ii), and the power for incidental and supplemen tary matters would not cover the making of an order regu- lating the supply of hay or kadbi. It would not, there fore , be feasible to make with reference to that part of the enactment which deals with cattle any order prohibi- ting or restricting the export of hay or kadbi from the Province and the former Order, dated 22nd December 1942 would not, therefore, be saved by virtue of the provisi - ons of section 5 of the Act. For these reasons the Order dated 22nd December 1942, cannot be said to have been preserved to the extent it purports to regulate the expor - t of hay or kadbi from the Province and to that extent it has become inoperative. However, executive action prohibiting the export of hay or kadbi from the Province is feasible, provided it can be distinctly related t o the Entry 20- Agriculture. If Government are satisfied that it is necessary in the interest of agriculture and for the preservation of cattle as a vital element in agriculture that hay or kadbi should not be exported from the Province, it would be competent for Government t o take executive action in that behalf and also to promote independent legislation by Ordinance or law. The execu tive order, if any is issued should make it clear that the action is being taken in the interest of agriculture.

Sd/ P.M.Lad.
24/12

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G/723, dated the 27th December 1948

The question which arises for consideration in this case is whether an order can be issued under the Bombay Essential Commodities and Cattle (Control Act, 1946, prohibiting the export of cotton seed from the Province of Bombay.

2. Attention is invited to the recent opinion of the R.L.A. No. G.723 dated 27th December 1948 As pointed out in that opinion the Bombay Essential Commodities and Cattle (Control) Act, 1946, in so far as it relates to essential commodities and their distribution etc, would be relatable to entries 27 and 29 in the Provincial Legislative List In virtue of the provisions of section 297 of the Government of India Act, 1935, an order can validly be made under the Provincial Act which would prohibit the export of cotton seed from the Province However, for the reasons stated in the opinion referred to above, executive action prohibiting the export of cotton seed from the Province or independent legislation for the purpose is feasible provided it can be distinctly related to entry 20 in the Provincial Legislative List (Agriculture).

Sd/P.M.Lad.

Remembrancer of Legal Affairs.

VGP. 18-7-56.